

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF INDIANA  
INDIANAPOLIS DIVISION

2006 NOV 21 PM 2:55

SOUTHERN DISTRICT  
OF INDIANA  
LAURA A. BRIGGS  
CLERK

UNITED STATES OF AMERICA

Plaintiff,

v.

DANIEL R. RAPIER, NAOMI LYNN RAPIER,  
and FRANKLIN COUNTY, INDIANA

Defendants.

CIVIL ACTION NO.

**1: 06-cv-1686-LJM-WTL**

**COMPLAINT**

Plaintiff, the United States of America, by the authority of the Attorney General of the United States of America, on behalf of the Administrator of the United States Environmental Protection Agency ("EPA"), and by and through its undersigned attorneys, alleges as follows:

**NATURE OF THE ACTION**

1. This is a civil action pursuant to Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. § 9607, as amended. The United States seeks recovery of un-reimbursed costs incurred by the United States in responding to a release and/or threat of release of hazardous substances at the Laurel Stone Church Road Site (the "LSCR Site" or the "Site") located in Franklin County, Indiana. In addition, the United States seeks a declaratory judgment under Section 113(g)(2) of CERCLA, 42 U.S.C. § 9613(g)(2), that Defendants are jointly and severally liable for any future response costs incurred by the United States in connection with the Site.

## **JURISDICTION AND VENUE**

2. This Court has jurisdiction over the subject matter of this action and the parties hereto pursuant to Sections 107(a) and 113(b) of CERCLA, 42 U.S.C. § 9607(a) and 9613(b), and pursuant to 28 U.S.C. §§ 1331 and 1345.

3. Venue is proper in this district pursuant to Section 113(b) of CERCLA, 42 U.S.C. § 9613(b), and pursuant to 28 U.S.C. § 1391(b) and (c), because the threatened and/or actual releases of hazardous substances occurred, and the Site is located, in this district.

## **DEFENDANTS**

4. Husband and wife Daniel R. Rapier and Naomi Lynn Rapier (the “Rapiers”) are the present owners of the LSCR Site. The Rapiers purchased the LSCR Site as part of the approximately 500-acre property located at 19105 Stone Church Road in Laurel Township, Indiana on February 5, 1991. Daniel and Naomi Rapier are each a “person” within the meaning of Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

5. Franklin County, Indiana (“Franklin County”) leased the LSCR Site and operated it as a dump from approximately August 1, 1966 to January 1, 1971. Franklin County is a “person” within the meaning of Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

## **BACKGROUND**

### **Facility History**

6. The LSCR Site is an area comprising approximately 10 acres of an approximately 500-acre property located at 19105 Stone Church Road in Laurel Township, Franklin County, Indiana, approximately two miles east of Laurel, Indiana.

7. The LSCR Site is in a clearing between two branches of the Little Duck Creek. The clearing also includes a residence and a barn. The remaining property surrounding the Site consists of farm fields and wooded areas.

8. The two tributaries of Little Duck Creek on the LSCR Site discharge downstream into the Whitewater River. The Whitewater River is used for recreational purposes, including fishing and

canoeing. The Laurel Water Utility has two wells located in the Whitewater River Valley aquifer, providing water for domestic and manufacturing needs.

9. The LSCR Site is bordered by rural residential properties along Stone Church Road, which use residential water wells for drinking water.

10. Franklin County leased the LSCR Site and operated it as a dump from approximately August 1, 1966 to January 1, 1971.

11. The Rapiers purchased the LSCR Site as part of a 500-acre property located at 19105 Stone Church Road in Laurel Township, Indiana, on February 5, 1991.

### **United States' Response Action**

12. On April 23, 2002, the Indiana Department of Environmental Management ("IDEM") requested the assistance of the EPA in conducting Site investigation and removal activities at the LSCR Site.

13. On April 29, 2002 and again on May 22, 2002, EPA and its Superfund Technical Assessment and Remediation Team ("START") contractor, Roy Weston, Inc., conducted site investigations, including test trenching and soil sampling.

14. The investigations revealed partially buried drums in varying stages of deterioration at multiple locations in the LSCR Site, including in a grass area near the residence, in Little Duck Creek, and in the embankment above Little Duck Creek. There was unrestricted access to drum disposal areas, and contents were spilled at numerous locations.

15. During their investigations, EPA and its START contractor obtained samples from subsurface and partially buried drums, which they sent to ACE Technologies, Inc. for analysis. Tests of these samples revealed hazardous wastes of at least three types – waste with flash points of less than 140 degrees Fahrenheit, waste with a Toxicity Characteristic Leachate Procedure ("TCLP") lead concentration of greater than 5 mg/l, and waste with a TCLP benzene concentration of greater than 0.5 mg/l – along with xylene, a CERCLA hazardous substance.

16. It was clear that the contents of deteriorating drums had been spilled at the Site and

testing identified elevated levels of hazardous substances in waste residues in soils.

17. Based on the investigations and sample analysis, the EPA determined that an imminent and substantial endangerment to public health, welfare, or the environment existed at the LSCR Site.

18. On June 13, 2002, EPA notified the Rapiers by letter of the EPA's determination of the necessity for an emergency response action at the LSCR Site, and gave them the opportunity to perform the response action. The Rapiers declined to perform or finance the response action.

19. On July 24, 2002, the EPA Superfund Division Director for EPA Region 5 signed an Action Memorandum for a time-critical removal, determining that the actual release or threatened release of hazardous substances at the LSCR Site posed an imminent and substantial endangerment to public health and welfare or the environment.

20. On August 22, 2002, Mr. Rapier granted access to EPA for response-related CERCLA activities at the Site.

21. From October 10, 2002 to August 15, 2003, EPA conducted CERCLA emergency removal activities at the Site. Removal activities included excavation of topsoil, removal and disposal of partially buried and subsurface drums, backfilling and grading, and removal and replacement of a portion of the road that was damaged by the heavy disposal trucks. A total of 2,656 drums and 5,256 tons of contaminated soil and other waste were transported off-site for disposal.

22. As of April 30, 2006, EPA had expended at least \$2,381,429.21 in costs for its response activities related to the LSCR Site. EPA has continued and will continue to incur response costs, including administrative and enforcement costs, as a result of the continued release and/or threatened release of hazardous substances at the Site.

23. On June 7, 2006, EPA issued demand letters to Defendants for costs associated with the emergency response action at the LSCR Site. As of the date of this Complaint, Defendants have not made any payments to EPA in response to the demand letters.

**COUNT ONE**  
**Recovery of Costs Under CERCLA § 107, 42 U.S.C. § 9607**

24. Paragraphs 1 through 23 are realleged and incorporated herein by reference.

25. Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), provides, in pertinent part: “ (1) the owner and operator of a vessel or a facility, (2) any person who at the time of disposal of any hazardous substance owned or operated any facility at which such hazardous substances were disposed of . . . shall be liable for -- (A) all costs of removal or remedial action incurred by the United States Government . . . not inconsistent with the national contingency plan . . . ”

26. CERCLA Section 113(g)(2), 42 U.S.C. § 9613(g)(2), provides, in pertinent part: “In any such action [for recovery of costs] . . . , the court shall enter a declaratory judgment on liability for response costs or damages that will be binding on any subsequent action or actions to recover further response costs or damages.”

27. Defendants Daniel and Naomi Rapier are owners of the LSCR Site within the meaning of Section 101(20) of CERCLA, 42 U.S.C. § 9601(20), and Section 107(a)(1) of CERCLA, 42 U.S.C. § 9607(a)(1).

28. Defendant Franklin County was the operator of the LSCR Site at the time of disposal of hazardous substances within the meaning of Section 101(20) of CERCLA, 42 U.S.C. § 9601(20), and Section 107(a)(2) of CERCLA, 42 U.S.C. § 9607(a)(2).

29. The LSCR Site is a “facility” within the meaning of Section 101(9) of CERCLA, 42 U.S.C. § 9601(9), because it is a site or area where a hazardous substance has been deposited, stored, disposed of, or placed, or otherwise come to be located.

30. There have been “releases,” or the substantial threat of releases, within the meaning of Section 101(22) of CERCLA, 42 U.S.C. § 9601(22), of hazardous substances at or from the LSCR Site, including releases or threatened releases of lead, benzene, xylene, and hazardous wastes.

31. In response to the release or substantial threat of release of hazardous substances at the LSCR Site, the United States has taken response actions at the LSCR Site within the meaning of Section 101(25) of CERCLA, 42 U.S.C. § 9601(25), and has incurred response costs as set forth

in Paragraph 22 in connection with taking those response actions. Additional response costs have been and continue to be incurred, including enforcement costs.

32. The response action taken, and the response costs incurred, by the United States at and in connection with the LSCR Site were not inconsistent with the National Contingency Plan, 40 C.F.R. Part 300.

33. Defendants are jointly and severally liable to the United States pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), for all un-reimbursed response costs incurred, and to be incurred, by the United States in connection with the LSCR Site, including enforcement costs and prejudgment interest on such costs.

34. Pursuant to Section 113(g)(2) of CERCLA, 42 U.S.C. § 9613(g)(2), the United States is entitled to a declaratory judgment that each of the Defendants is jointly and severally liable for future response costs that the United States may incur in connection with the LSCR Site.

#### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff, the United States of America, respectfully requests that the Court:

1. Pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), enter judgments against each Defendant, jointly and severally, in favor of the United States for all response costs incurred by the United States for response activities relating to the LSCR Site, including prejudgment interest;

2. Enter a declaratory judgment pursuant to Section 113(g)(2) of CERCLA, 42 U.S.C. § 9613(g)(2), that Defendants are liable under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), for future response costs incurred at the LSCR Site.

3. Award the United States the costs of this action; and

4. Grant such other and further relief as the Court deems just and proper.

Respectfully submitted,

For the United States of America

W. BENJAMIN FISHEROW  
Deputy Chief  
Environmental Enforcement Section  
Environment and Natural Resources Division  
United States Department of Justice

DATE: 11/20/06

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## CIVIL COVER SHEET

JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating a civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

## (a) PLAINTIFFS

United States of America

## DEFENDANTS

Daniel R. Rapier, Naomi Rapier, and Franklin County

## (b) County of Residence of First Listed Plaintiff

(EXCEPT IN U.S. PLAINTIFF CASES)

2006 NOV 21 PM 2:55

SOUTHERN DISTRICT  
OF INDIANA  
LAURA A. BRIGGS  
CLERK

## County of Residence of First Listed Defendant

Butler County, Ohio

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

## (c) Attorney's (Firm Name, Address, and Telephone Number)

Laura Thoms, U.S. Department of Justice, Environment and Natural Resources  
Division  
P.O. Box 7611, Washington D.C. 20044-7611 (202) 305-0260

## Attorneys (If Known)

See Attachment A

1:06-07-1525-LIM-WTL

## I. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 ☐ U.S. Government Plaintiff ☐ 3 Federal Question (U.S. Government Not a Party)
- 2 ☐ U.S. Government Defendant ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

## III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | PTF                                     | DEF   | PTF   | DEF   |
|---|---|---|---|
| Citizen of This State                   | <input type="checkbox"/> 1 <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in This State     | <input type="checkbox"/> 4 <input type="checkbox"/> 4 |
| Citizen of Another State                | <input type="checkbox"/> 2 <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 <input type="checkbox"/> 3 | Foreign Nation  | <input type="checkbox"/> 6 <input type="checkbox"/> 6 |

## IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
110 Insurance 120 Marine 130 Miller Act 140 Negotiable Instrument 150 Recovery of Overpayment & Enforcement of Judgment 151 Medicare Act 152 Recovery of Defaulted Student Loans (Excl. Veterans) 153 Recovery of Overpayment of Veteran's Benefits 160 Stockholders' Suits 190 Other Contract 195 Contract Product Liability 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <b>PERSONAL INJURY</b> <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other <b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
<b>REAL PROPERTY</b> 210 Land Condemnation 220 Foreclosure 230 Rent Lease & Ejectment 240 Torts to Land 245 Tort Product Liability 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights <b>PRISONER PETITIONS</b> <input type="checkbox"/> 510 Motions to Vacate Sentence <b>Habeas Corpus:</b> <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition			

## V. ORIGIN (Place an "X" in One Box Only)

- 1 ☐ Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

## I. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. § 9601 et seq.

Brief description of cause:

Claim under CERCLA for reimbursement of response costs incurred by the U.S. Environmental Protection Agency

## II. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$ at least 2,381,429.21

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☐ No

## III. RELATED CASE(S) IF ANY

(See instructions).

JUDGE

DOCKET NUMBER

ATE

11/20/06

SIGNATURE OF ATTORNEY OF RECORD

Laura Thoms

JR OFFICE USE ONLY

RECEIPT # \_\_\_\_\_ AMOUNT \_\_\_\_\_ APPLYING IFP \_\_\_\_\_ JUDGE \_\_\_\_\_ MAG. JUDGE \_\_\_\_\_



## ATTACHMENT A: ATTORNEYS

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